

ST 03-0086-GIL 07/08/2003 HOTEL OPERATORS' TAX

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101 (This is a GIL)

July 8, 2003

Dear Xxxxx:

This letter is in response to your letter dated February 3, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/).

In your letter, you have stated and made inquiry as follows:

AAA owns hotels in COUNTIES. I am updating our records and would like information to make sure our hotels are collecting and paying the proper amount of taxes on all taxable items.

Of the following items:

Soda Sales  
Vending Machine Income  
Meeting Rooms  
Photocopy Income  
Laundry Service Income  
Laundry Soap Income  
Rollaway Rentals  
Movie Rentals  
Equipment Rentals  
In-Room Safe Rentals  
Fire Log Income  
Pet Charges  
Grocery Service Income  
Microwave and Refrigerators Rentals  
Miscellaneous Revenue

- What items are considered taxable?
- What is the percentage of sales and occupancy tax due on each item?

Any information the Department of Revenue can offer will be much appreciated. Thank you for your assistance. If there are any questions in regards to my request, I can be contacted.

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101, enclosed. The Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room.

Receipts received from rentals to permanent residents are not subject to the tax. Permanent residents are persons who occupy or have the right to occupy such rooms for at least thirty consecutive days. See Section 480.101(a)(1). Because the Hotel Operators' Occupation Tax is based upon gross rental receipts, rooms provided gratis, that generate no gross rental receipts, would not enter into computation of the tax.

Receipts subject to the tax do not include those which are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations. Examples of receipts not subject to the Hotel Operators' Occupation Tax include those from the selling of food (although food sales are subject to sales tax in Illinois), tickets for the right to use golfing or skiing facilities, rental of meeting or conference rooms, or the renting of parking spaces. Please refer to Section 480.101(b)(6).

In general, hotels in Illinois incur a Use Tax liability upon items of tangible personal property they purchase for the purpose of providing to guests, including toiletry and food items, whether these are automatically placed into the guest rooms or are available at the front desk or lobby area. Illinois registered vendors of hotel supply items incur Retailers' Occupation Tax liabilities upon sales and deliveries in Illinois, and they collect the corresponding Use Tax from their hotel customers. Hotels that purchase from unregistered out-of-State vendors must self-assess and pay the Use Tax directly to this Department. Hotels also incur a Use Tax liability upon items purchased for use in the guest rooms or other locations, such as furniture, dishes, cutlery, etc.

Hotels that receive revenues from dry cleaning, photocopying or laundry services are acting as servicemen subject to the Service Occupation Tax Act, which imposes liability on the transfer of tangible personal property incident to sales of service. You can determine the appropriate method for calculating your tax liabilities based upon the following information.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax may be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Sales of food by hotels, whether in restaurants, coffee shops, or catered functions, are subject to Retailers' Occupation Tax. Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine, and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared by the retailer for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food for human consumption that is to be consumed off the premises where it is sold includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine. This is subject to the low rate of tax regardless of whether on-premises facilities for consumption are provided at that location. For example, a candy bar sold through a vending machine is subject to the low rate of tax. See Section 130.310(b)(7).

Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310(b)(5).

Under Illinois law, rental receipts from the rental of tangible personal property, such as VCRs, video cassettes, or audio visual equipment, under true leases are not subject to tax. The only exception is automobiles leased for one year or less. Illinois lessors incur a Use Tax obligation upon the cost price of tangible personal property they purchase for leasing purposes. See 86 Ill. Adm. Code 130.2010, enclosed.

In general, the receipts charged by hotels as a result of their provision of in-room movies are subject to the Hotel Operators' Occupation Tax. It is the Department's position that in-room movies provided by hotel operators constitute "services" or "accommodations accompanying the use and possession of the room" that are subject to tax. However, the Department is aware that there may exist situations in which third-party video companies, as opposed to the hotel operators, provide in-room movies directly to hotel guests. An examination of all the facts and circumstances would have to be done in order for the Department to determine whether this is the case in any particular situation. In situations where the Department finds that third party video companies, rather than the hotel operators, are actually providing the in-room movies directly to the hotel guests, the Hotel Operators' Occupation Tax would not apply.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis

Associate Counsel

MAJ:msk  
Enc.